IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

CAPITOL RECORDS, INC., *et al.*,

Plaintiffs,

vs.

JAMMIE THOMAS,

Defendant.

Case No.: 06cv1497-MJD/RLE

PLAINTIFFS' EXPEDITED MOTION TO PRECLUDE DEFENDANT FROM OBJECTING TO PLAINTIFFS' CERTIFICATES OF COPYRIGHT

Plaintiffs respectfully move this Court to preclude Defendant from objecting to Plaintiffs' Certificates of Copyright and, alternatively, for the Court to take judicial notice of such documents under Fed. R. Evid. 201. Given the time sensitivity of this issue, Plaintiffs request that the Court consider this motion on an expedited basis and, if required, set a telephonic hearing on the motion.

In support of their motion, Plaintiffs state as follows:

1. Plaintiffs seek to find Defendant liable for infringement of their exclusive rights in copyright in the twenty-four (24) sound recordings listed in Amended Exhibit A and Amended Schedule 1 (collectively, "Sound Recordings"). Copies of Amended Exhibit A and Amended Schedule 1 are attached as **Exhibit A** hereto.

2. In support of their infringement claim, Plaintiffs intend to introduce true and correct copies of Certificates of Registration from the U.S. Copyright Office for the

24 Sound Recordings.[1] Plaintiffs have designated copies of these Certificates of Registration as Plaintiffs' Trial Exhibit No. 3. (*See* Plaintiffs' Exhibit List, Doc. No. 267.) A copy of Plaintiffs' Trial Exhibit No. 3 is attached as **Exhibit B** hereto.

3. In accordance with the Court's Third Amended Date Certain Trial Notice (Doc. No. 256), Plaintiffs sent a copy of Plaintiffs' Trial Exhibit No. 3 to Defendant's counsel last week. On June 1, 2009, Defendant's counsel informed Plaintiffs that they intend to object to Plaintiffs' Trial Exhibit No. 3 under Fed. R. Evid. 901 because these true and correct copies are not certified from the U.S. Copyright Office.

4. As an initial matter, Plaintiffs' ownership of the Sound Recordings should not be an issue in the upcoming trial. The jury verdict from the first trial implicitly determined that Plaintiffs had registered their copyrights when it found Plaintiffs had proven their copyright infringement claim against Defendant. The Court's subsequent decision to set aside the verdict hinged on an issue related to Defendant's liability for infringement, and had nothing to do with Plaintiffs' ownership of the copyrights. As such, Plaintiffs' ownership should not be a subject of dispute at trial.

5. Up until two days ago, Defendant had previously acknowledged the propriety of Plaintiffs' registration in the copyrights by not objecting to the Certificates of Copyright admitted in the first trial. Nor did Defendant ever once raise the issue of certified copies during the first trial.

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[1] In the first trial, the Court admitted Plaintiffs' Certificates of Registration for the sound recordings at issue as Plaintiffs' Exhibit No. 3.

6. In fact, Defendant has admitted she has no evidence to dispute that Plaintiffs' registrations of the copyrights at issue are valid. In her deposition on May 1, 2007, Defendant admitted she has no evidence to dispute that (i) Plaintiffs' Sound Recordings were duly registered with the U.S. Copyright Office more than three years before the Complaint was filed and (ii) that such registrations were valid (*See* Jammie Thomas Dep. 217:1-218:22, relevant excerpts attached as **Exhibit C** hereto.)

7. Furthermore, Defendant never objected on Fed. R. Evid. 901 grounds when Plaintiffs identified non-certified copies of Certificates of Copyright as a trial exhibit in September 2007. (*See* Email from Brian Toder dated September 17, 2007, stating objections to Plaintiffs' Trial Exhibit No. 3 used in the first trial, attached as **Exhibit D** hereto.)

8. Similarly, Defendant never objected when the Court admitted non-certified copies of Certificates of Registration during the first trial in October 2007 after Plaintiffs laid a proper foundation for the true and correct copies of Certificates of Registration. (*See* Trial Transcr. 112:11-114:4, 471:23-477:19, 501:4-502:10, 508:23-509:22, 512:3-12, relevant excerpts attached as **Exhibit E** hereto.)

9. First, Defendant should be estopped from now objecting to non-certified copies of the Certificates of Registration where there has been no reasonable opportunity for Plaintiffs to obtain what was never at issue before. As a practical matter, certified copies typically take 10-15 business days to obtain from the U.S. Copyright Office. Even on an expedited basis, it will still take 5-10 business days and remains unclear whether Plaintiffs will be able to obtain certified copies prior to trial. Moreover, obtaining

certified copies on an expedited basis will cost thousands of dollars. Such a cost is unduly burdensome where there is no evidence to dispute that non-certified Certificates of Registration were admitted at the first trial and foundation was established for their admission.

10. Second, in the alternative, the Court should take judicial notice of the Certificates of Copyright contained in Plaintiffs' Trial Exhibit No. 3. Under Fed. R. Evid. 201(d), a court "shall take judicial notice if requested by a party and supplied with the necessary information." *See Lifted Research Group, Inc. v. Salem*, 2009 U.S. Dist. LEXIS 44850, at *2, n.1 (N.D. Cal. May 15, 2009) (taking judicial notice of a copy of a copyright registration certificate). Up until this point, Defendant has never previously objected under Fed. R. Evid. 901 nor has Defendant put forth any evidence to dispute Plaintiffs' registrations in the copyrights or the validity of those registrations. Her objection is now untimely and will serve only to force Plaintiffs to unnecessarily expend resources on an issue upon which there is no dispute.

11. Third, the only reason Defendant is now objecting to these certificates is because Defendant intends to put Plaintiffs to an unnecessary burden to establish that which has already been established and will be established again (i.e., the Plaintiffs owned and registered the copyrights at issue). In this respect, Defendant's actions are vexatious and should not be permitted. *See* 28 U.S.C. 1927. In the face of Defendant's testimony that she has no evidence to dispute registration of the copyrights in the Sound Recordings, Plaintiffs request that the Court advise Defendant that continued maintenance of this objection, absent any new evidence to dispute registration, will

subject her to a requirement to pay reasonable attorney's fees and costs incurred to obtain certified copies of the certificates. *See* 28 U.S.C. 1927.

12. Plaintiffs conferred with Defendant's counsel before filing this motion. Defendant's counsel stated that Defendant will not withdraw her objection under Fed. R. Civ. P. 901 to Plaintiffs' Trial Exhibit No. 3.

CONCLUSION

WHEREFORE, Plaintiffs request entry of an order finding that Defendant is precluded from objecting to Plaintiffs' Certificates of Copyright (Plaintiffs' Trial Exhibit No. 3) under Fed. R. Evid. 901. Alternatively, Plaintiffs request that the Court take judicial notice of each of the Certificates of Registration contained in Plaintiffs' Trial Exhibit No. 3.

A form of order is attached for the Court's convenience.

Respectfully submitted this 3rd day of June 2009.

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